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BEFORE THE

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# Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Implementation of Section 309(j)  
of the Communications Act  
-- Competitive Bidding for Commercial  
Broadcast and Instructional Television Fixed  
Service Licenses )

MM Docket No. 97-234

Reexamination of the Policy  
Statement on Comparative  
Broadcast Hearings )

GC Docket No. 92-52

Proposals to Reform the Commission's  
Comparative Hearing Process to  
Expedite the Resolution of Cases )

GEN Docket No. 90-264

To: The Commission

## REPLY COMMENTS OF NATIONAL MINORITY T.V., INC.

National Minority T.V., Inc. ("NMTV"), by its attorneys, hereby submits its Reply Comments in the above-referenced proceeding. These Reply Comments are directed toward that portion of the Commission's Notice of Proposed Rule Making ("NPRM"), FCC 97-397, released November 26, 1997, that discusses proposals to govern broadcast comparative renewal proceedings that are currently before the Commission.

1. NMTV has pending an application for renewal of its license for Station KNMT(TV), Portland, Oregon that was filed on October 1, 1993. There is a competing application for the KNMT facilities. In addition, there is a pending petition to deny. Although NMTV has filed a motion to dismiss the petition to deny, no action has yet been taken.

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2. In its NPRM, the Commission has proposed to adopt for comparative broadcast renewal cases the two-step renewal procedure it developed for comparative cellular renewal proceedings (NPRM, ¶ 102). Under that approach, the Commission would grant the renewal application without a comparative hearing if it determined in a threshold hearing that the renewal applicant deserved a renewal expectancy for “substantial” performance during the license term. NMTV endorses this approach with one slight modification. Through no fault on the part of NMTV, KNMT’s 1993 renewal application has now been pending for almost five years. NMTV submits that it would be fundamentally unfair to base a decision on KNMT’s performance solely on a license term which has long since passed. Thus, in making its threshold determination on entitlement to a renewal expectancy, the Commission should also take into consideration the incumbent licensee’s performance up to the present as well as improvements the incumbent licensee has made to its facility during that time. Moreover, since licensees will be obligated to take steps to implement digital television in the near future, the steps taken by an incumbent television licensee toward that goal should receive extra credit in determining the licensee’s entitlement to a renewal expectancy.

3. In conjunction with the adoption of a two-step procedure, the Commission should also take other appropriate steps. First, the Commission should swiftly act on motions to dismiss or deny which will eliminate petitions to deny and competing applications. Second, the Commission should carefully examine whether competing applications are bona fide and dismiss those that are not. In this connection, the Commission should require applicants whose applications have been pending for years to provide financial and site documents demonstrating that they were qualified when their applications were filed and have continually remained qualified. Steps such as these will address issues of abuse such as those with which the

Commission has long wrestled. See, e.g., Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, 4 FCC Rcd 4780 (1989), recon. granted in part, 5 FCC Rcd 3902 (1990).

4. Finally, where settlements are reached in comparative renewal proceedings, the Commission should act on them in an expedited manner. Given the length of time that renewal applications, such as that filed by NMTV, have already been delayed, it is only fair that the Commission provide renewal applicants involved in settlements with preferential treatment over new applicants.

5. In sum, National Minority T.V., Inc. urges the Commission to adopt its two-step proposal for comparative renewal proceedings as modified by the procedures set forth above.

Respectfully submitted,

NATIONAL MINORITY T.V., INC.

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Dated: February 17, 1998


**CERTIFICATE OF SERVICE**

I, Margie Sutton Chew, a secretary in the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., do hereby certify that true copies of the foregoing **"REPLY COMMENTS OF NATIONAL MINORITY T.V., INC."** were sent this 17th day of February 1998, by first class United States mail, postage prepaid, to the following:

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